

INSURANCE CODE

TITLE 2. TEXAS DEPARTMENT OF INSURANCE

SUBTITLE A. ADMINISTRATION OF THE TEXAS DEPARTMENT OF INSURANCE

CHAPTER 36. DEPARTMENT RULES AND PROCEDURES

SUBCHAPTER A. RULES

Sec. 36.001. GENERAL RULEMAKING AUTHORITY. (a) The commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under this code and other laws of this state.

(b) Rules adopted under this section must have general and uniform application.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2003, 78th Leg., ch. 206, Sec. 15.01, eff. June 11, 2003.

Sec. 36.002. ADDITIONAL RULEMAKING AUTHORITY. The commissioner may adopt reasonable rules that are:

(1) necessary to effect the purposes of a provision of:

(A) Subchapter B, Chapter 5;

(B) Subchapter C, Chapter 1806;

(C) Subchapter A, Chapter 2301;

(D) Chapter 251, as that chapter relates to casualty insurance and fidelity, guaranty, and surety bond insurance;

(E) Chapter 253;

(F) Chapter 2008, 2251, or 2252; or

(G) Subtitle B, Title 10; or

(2) appropriate to accomplish the purposes of a provision of:

(A) Section 37.051(a), 403.002, 501.159, 941.003(b)(1) or (c), or 942.003(b)(1) or (c);

(B) Subchapter H, Chapter 544;

(C) Chapter 251, as that chapter relates to:

(i) automobile insurance;

(ii) casualty insurance and fidelity, guaranty, and surety bond insurance;

(iii) fire insurance and allied lines;

(iv) workers' compensation insurance; or

(v) aircraft insurance;

(D) Chapter 5, [252](#), [253](#), [254](#), [255](#), [256](#), [426](#), [493](#), [494](#), [1804](#), [1805](#), [1806](#), [2171](#), [6001](#), [6002](#), or [6003](#);

(E) Subtitle B, C, D, E, F, H, or I, Title 10;

(F) Section [417.008](#), Government Code; or

(G) Chapter [2154](#), Occupations Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 11, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 2B.002, eff. April 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 3B.0591(d), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. [3167](#)), Sec. 9.0591(d), eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. [1070](#)), Sec. 3.01, eff. September 1, 2017.

Sec. 36.003. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. The commissioner may not adopt rules restricting advertising or competitive bidding by a person regulated by the department except to prohibit false, misleading, or deceptive practices by the person.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.004. COMPLIANCE WITH NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS REQUIREMENTS; RULES. (a) Except as provided by Subsection (c) and Section [36.005](#), the department may not require an insurer to comply with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners, including a rule, regulation, directive, or standard relating to policy reserves, unless application of the rule, regulation, directive, or standard is expressly authorized by

statute.

(b) For purposes of Subsection (a), a version of a rule, regulation, directive, or standard is expressly authorized by statute if:

(1) the statute explicitly authorizes the commissioner to adopt rules consistent with the rule, regulation, directive, or standard; or

(2) that version is the latest version of the rule, regulation, directive, or standard on the date that the statute was enacted.

(c) The commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if:

(1) the commissioner finds the rule is technical or nonsubstantive in nature or necessary to preserve the department's accreditation; and

(2) before the adoption of the rule, the commissioner provides the standing committees of the senate and house of representatives with primary jurisdiction over the department with written notice of the commissioner's intent to adopt the rule.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 206, Sec. 15.02, eff. June 11, 2003.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 752 (S.B. [1450](#)), Sec. 1, eff. September 1, 2017.

Sec. 36.005. INTERIM RULES TO COMPLY WITH FEDERAL REQUIREMENTS. (a) The commissioner may adopt rules to implement state responsibility in compliance with a federal law or regulation or action of a federal court relating to a person or activity under the jurisdiction of the department if:

(1) federal law or regulation, or an action of a federal court, requires:

(A) a state to adopt the rules; or

(B) action by a state to ensure protection of the citizens of the state;

(2) the rules will avoid federal preemption of state insurance regulation; or

(3) the rules will prevent the loss of federal funds to this state.

(b) The commissioner may adopt a rule under this section only if the federal action requiring the adoption of a rule occurs or takes effect between sessions of the legislature or at such time during a session of the legislature that sufficient time does not remain to permit the preparation of a recommendation for legislative action or permit the legislature to act. A rule adopted under this section shall remain in effect only until 30 days following the end of the next session of the legislature unless a law is enacted that authorizes the subject matter of the rule. If a law is enacted that authorizes the subject matter of the rule, the rule will continue in effect.

Added by Acts 2003, 78th Leg., ch. 206, Sec. 15.03, eff. June 11, 2003.

Sec. 36.007. RULES RELATING TO AGREEMENTS LIMITING STATE AUTHORITY TO REGULATE INSURANCE PROHIBITED; EFFECT OF AGREEMENT.

(a) The commissioner may not adopt or enforce a rule that implements an interstate, national, or international agreement that:

(1) infringes on the authority of this state to regulate the business of insurance in this state; and

(2) was not approved by the legislature.

(b) An agreement described by Subsection (a) has no effect on the authority of this state to regulate the business of insurance in this state unless the agreement is approved by the legislature.

Added by Acts 2017, 85th Leg., R.S., Ch. 752 (S.B. [1450](#)), Sec. 2, eff. September 1, 2017.

SUBCHAPTER B. DEPARTMENT PROCEDURES

Sec. 36.101. APPLICABILITY OF CERTAIN LAWS. Except as specifically provided by law, the department is subject to Chapters [2001](#) and [2002](#), Government Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.102. SUMMARY PROCEDURES FOR ROUTINE MATTERS. (a) The commissioner by rule may:

(1) create a summary procedure for routine matters; and

(2) designate department activities that otherwise would be subject to Chapter 2001, Government Code, as routine matters to be handled under the summary procedure.

(b) An activity may be designated as a routine matter only if the activity is:

(1) voluminous;

(2) repetitive;

(3) believed to be noncontroversial; and

(4) of limited interest to anyone other than persons immediately involved in or affected by the proposed department action.

(c) The rules may establish procedures different from those contained in Chapter 2001, Government Code. The procedures must require, for each party directly involved, notice of a proposed negative action not later than the fifth day before the date the action is proposed to be taken.

(d) The rules may provide for the delegation of authority to take action on a routine matter to a salaried employee of the department designated by the commissioner.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.103. REVIEW OF ACTION ON ROUTINE MATTER. (a) A person directly or indirectly affected by an action of the commissioner or the department on a routine matter taken under the summary procedure adopted under Section 36.102 is entitled to a review of the action under Chapter 2001, Government Code.

(b) The person must apply to the commissioner not later than the 60th day after the date of the action to be entitled to the review.

(c) The timely filing of the application for review immediately stays the action pending a hearing on the merits.

(d) The commissioner may adopt rules relating to an application for review under this section and consideration of the application.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.104. INFORMAL DISPOSITION OF CERTAIN CONTESTED CASES. (a) The commissioner may, on written agreement or stipulation of each party and any intervenor, informally dispose of a contested case in accordance with Section 2001.056, Government Code, notwithstanding any provision of this code that requires a hearing before the commissioner.

(b) This section does not apply to a contested case under Title 5, Labor Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.055, eff. September 1, 2005.

Sec. 36.105. NEWSPAPER PUBLICATION. Except as otherwise provided by law, a notice or other matter that this code requires to be published must be published for three successive weeks in two newspapers that:

(1) are printed in this state; and

(2) have a general circulation in this state.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.106. WAIVER OF CERTAIN NOTICE REQUIREMENTS. The commissioner may, on written agreement or stipulation of each party and any intervenor, waive or modify the notice publication requirement of Section 822.059, 822.157, 841.060, or 884.058.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.003, eff. April 1, 2009.

Sec. 36.107. ACCEPTANCE OF ACTUARIAL OPINION. An opinion of an actuary requested by the commissioner under this code,

another insurance law of this state, or a rule of the commissioner is presumed to be accurate and valid, and the department shall accept the opinion unless controverted. The department may employ, at the department's expense, another actuary to provide an alternative opinion.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.108. FILING DATE OF REPORT, FINANCIAL STATEMENT, OR PAYMENT DELIVERED BY POSTAL SERVICE. Except as otherwise specifically provided, for a report, financial statement, or payment that is required to be filed or made in the offices of the commissioner and that is delivered by the United States Postal Service to the offices of the commissioner after the date on which the report, financial statement, or payment is required to be filed or made, the date of filing or payment is the date of:

(1) the postal service postmark stamped on the cover in which the report, financial statement, or payment is mailed; or

(2) any other evidence of mailing authorized by the postal service reflected on the cover in which the report, financial statement, or payment is mailed.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 10, eff. April 1, 2005.

Sec. 36.109. RENEWAL EXTENSION FOR CERTAIN PERSONS PERFORMING MILITARY SERVICE. (a) The department may extend the renewal period for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the department to engage in an activity regulated under this code or other insurance laws of this state for a person who is unable in a timely manner to comply with renewal requirements, including any applicable continuing education requirements, because the person was on active duty in a combat theater of operations in the United States armed forces.

(b) A person must submit a written application for an extension under this section to the department.

(c) The department shall exempt a person who receives an extension under this section from any increased fee or other

penalty otherwise imposed for failure to renew in a timely manner.

(d) The commissioner may adopt rules as necessary to implement this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 11, eff. April 1, 2005.

Sec. 36.110. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The commissioner shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of department rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.

(b) The department's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commissioner shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 1.003, eff. September 1, 2011.

SUBCHAPTER C. GENERAL SUBPOENA POWERS; WITNESSES AND PRODUCTION OF RECORDS

Sec. 36.151. DEFINITION. In this subchapter, "records" includes books, accounts, documents, papers, correspondence, and other material.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.152. SUBPOENA AUTHORITY. (a) With respect to a matter that the commissioner has authority to consider or investigate, the commissioner may issue a subpoena applicable throughout the state that requires:

- (1) the attendance and testimony of a witness; and
- (2) the production of records.

(b) In connection with a subpoena, the commissioner may require attendance and production of records before the commissioner or the commissioner's designee:

- (1) at the department's offices in Austin; or
- (2) at another place designated by the commissioner.

(c) In connection with a subpoena, the commissioner or the commissioner's designee may administer an oath, examine a witness, or receive evidence.

(d) The commissioner must personally sign and issue the subpoena.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.001, eff. Sept. 1, 2003.

Sec. 36.153. SERVICE OF SUBPOENA. (a) A subpoena issued by the commissioner may be served, at the discretion of the commissioner, by the commissioner, an authorized agent of the commissioner, a sheriff, or a constable.

(b) The sheriff's or constable's fee for serving the subpoena is the same as the fee paid to the sheriff or constable for similar services.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.154. ENFORCEMENT OF SUBPOENA. (a) On application of the commissioner in the case of disobedience of a subpoena or the contumacy of a person, a district court may issue an order requiring a person subpoenaed to obey the subpoena, to give evidence, or to produce records if the person has refused to do so.

(b) A court may punish as contempt the failure to obey a

court order under Subsection (a).

(c) If the court orders compliance with the subpoena or finds the person in contempt for failure to obey the order, the commissioner, or the attorney general when representing the department, may recover reasonable costs and fees, including attorney's fees and investigative costs incurred in the proceedings.

(d) An application under Subsection (a) must be made in a district court in Travis County or in the county in which the subpoena is served.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.155. COMPENSATION FOR ATTENDANCE. A person required by subpoena to attend a proceeding before the commissioner or the commissioner's designee is entitled to:

(1) reimbursement for mileage in the same amount for each mile as the mileage travel allowance for a state employee for traveling to or from the place where the person's attendance is required, if the place is more than 25 miles from the person's place of residence; and

(2) a fee for each day or part of a day the person is required to be present as a witness that is equal to the greater of:

(A) \$10; or

(B) a state employee's per diem travel allowance.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.156. OUT-OF-STATE MATERIALS. (a) A person with materials located outside this state that are requested by the commissioner may make the materials available for examination at the place where the materials are located.

(b) The commissioner may designate a representative, including an official of the state in which the materials are located, to examine the materials.

(c) The commissioner may respond to a similar request from an official of another state or of the United States.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see S.B. [1809](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 36.157. USE AS EVIDENCE IN CERTAIN CASES. (a) This section applies to testimony or records resulting in a case involving an allegation of engaging in the business of insurance without a license.

(b) On certification by the commissioner under official seal, testimony taken or records produced under this subchapter and held by the department are admissible in evidence in a case without:

- (1) prior proof of correctness; and
- (2) proof, other than the certificate of the commissioner, that the testimony or records were received from the person testifying or producing the records.

(c) The certified records, or certified copies of the records, are prima facie evidence of the facts disclosed by the records.

(d) This section does not limit any other provision of this subchapter or any law that makes provision for the admission or evidentiary value of certain evidence.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see S.B. [1809](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 36.158. ACCESS TO INFORMATION. (a) A record or other evidence acquired under a subpoena under this subchapter is not a public record for the period the commissioner considers reasonably necessary to:

- (1) complete the investigation;
- (2) protect the person being investigated from unwarranted injury; or
- (3) serve the public interest.

(b) The record or other evidence is not subject to a subpoena, other than a grand jury subpoena, until:

(1) the record or other evidence is released for public inspection by the commissioner; or

(2) after notice and a hearing, a district court determines that obeying the subpoena would not jeopardize the public interest and any investigation by the commissioner.

(c) Except for good cause, a district court order under Subsection (b) may not apply to:

(1) a record or communication received from another law enforcement or regulatory agency; or

(2) the internal notes, memoranda, reports, or communications made in connection with a matter that the commissioner has the authority to consider or investigate.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.159. PRIVILEGED AND CONFIDENTIAL RECORDS AND INFORMATION; PROTECTIVE ORDERS. (a) A record subpoenaed and produced under this subchapter that is otherwise privileged or confidential by law remains privileged or confidential until admitted into evidence in an administrative hearing or a court.

(b) The commissioner may issue a protective order relating to the confidentiality or privilege of a record described by Subsection (a) to restrict the use or distribution of the record:

(1) by a person; or

(2) in a proceeding other than a proceeding before the commissioner.

(c) Specific information relating to a particular policy or claim is privileged and confidential while in the possession of an insurance company, organization, association, or other entity holding a certificate of authority from the department and may not be disclosed by the entity to another person, except as specifically provided by law.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.160. COOPERATION WITH LAW ENFORCEMENT. On request, the commissioner may furnish records or other evidence obtained by subpoena to:

(1) a law enforcement agency of this state, another

state, or the United States; or

(2) a prosecuting attorney of a municipality, county, or judicial district of this state, another state, or the United States.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.161. CERTAIN SUBPOENAS ISSUED TO FINANCIAL INSTITUTIONS. A subpoena issued to a bank or other financial institution as part of a criminal investigation is not subject to Section 30.007, Civil Practice and Remedies Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.162. EFFECT ON CONTESTED CASE. Sections 36.152, 36.156, 36.158, 36.160, and 36.161 do not affect the conduct of a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. JUDICIAL REVIEW

Sec. 36.201. ACTION SUBJECT TO JUDICIAL REVIEW. An action of the commissioner subject to judicial review under this subchapter includes a decision, order, rate, rule, form, or administrative or other ruling of the commissioner.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.2015. ACTIONS UNDER TITLE 5, LABOR CODE. Notwithstanding Section 36.201, a decision, order, form, or administrative or other rule of the commissioner of workers' compensation under Title 5, Labor Code, or a rule adopted by the commissioner of insurance under Title 5, Labor Code, is subject to judicial review as provided by Title 5, Labor Code.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.056, eff. September 1, 2005.

Sec. 36.202. PETITION FOR JUDICIAL REVIEW. (a) After failing to get relief from the commissioner, any insurance company or other party at interest who is dissatisfied with an action of the

commissioner may file a petition for judicial review against the commissioner as defendant.

(b) The petition must state the particular objection to the action and may be filed only in a district court in Travis County.
Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.203. JUDICIAL REVIEW. Judicial review of the action is under the substantial evidence rule and shall be conducted under Chapter 2001, Government Code.
Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.204. ACTION NOT VACATED. (a) The filing of a petition for judicial review of an action under this subchapter does not vacate the action.

(b) After notice and hearing, the court may vacate the action if the court finds it would serve the interest of justice to do so.
Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.205. APPEAL. (a) A party to the action under Section 36.202 may appeal to an appellate court that has jurisdiction, and the appeal is at once returnable to that court.

(b) An appeal under this section has precedence in the appellate court over any cause of a different character pending in the court.

(c) The commissioner is not required to give an appeal bond in an appeal arising under this subchapter.
Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. INVESTIGATION FILES

Sec. 36.251. DEFINITION. In this subchapter, "investigation file" means any information collected, assembled, or maintained by or on behalf of the department with respect to an investigation conducted under this code or other law. The term does not include information or material acquired by the department that is:

(1) relevant to an investigation by the insurance fraud unit; and

(2) subject to Section [701.151](#).

Added by Acts 2009, 81st Leg., R.S., Ch. 1039 (H.B. [4461](#)), Sec. 1, eff. June 19, 2009.

Sec. 36.252. INVESTIGATION FILES CONFIDENTIAL. (a) Information or material acquired by the department that is relevant to an investigation is not a public record for the period that the department determines is relevant to further or complete an investigation.

(b) Investigation files are not open records for purposes of Chapter [552](#), Government Code, except as specified herein.

Added by Acts 2009, 81st Leg., R.S., Ch. 1039 (H.B. [4461](#)), Sec. 1, eff. June 19, 2009.

Sec. 36.253. DISCLOSURE OF CERTAIN INFORMATION NOT REQUIRED. The department is not required to disclose under this subchapter:

(1) information that is:

(A) an attorney-client communication; or

(B) an attorney work product; or

(2) other information protected by a recognized privilege, a statute, an administrative rule, the Texas Rules of Civil Procedure, or the Texas Rules of Evidence.

Added by Acts 2009, 81st Leg., R.S., Ch. 1039 (H.B. [4461](#)), Sec. 1, eff. June 19, 2009.